

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2603 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI  
and  
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVINCHANDRA DAYASHANKER

Versus

STATE OF GUJARAT NOTI CE TO BESERVED THROUGH SECRETARY

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Appearance:

MR ND NANAVATI for Petitioners  
M/S MG DOSHIT & CO for Respondent No. 1  
RULE SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE R.K.ABICHANDANI  
and  
MR.JUSTICE D.H.WAGHELA

Date of decision: 07/03/2000

ORAL JUDGEMENT

#. The petitioners seek a direction on the respondents

to give them permanent appointment instead of appointment for eight months in a year. According to the petitioner, they are working as Class IV employees in the office of the Inspector of Land Records, Junagadh District who is the respondent No : 3 herein. As per the Government policy, the appointment was being given to these petitioners since 1973 only for eight months in a year. Though their services were treated as continuous for the purpose of increments etc. It is contended that the policy of giving appointment for eight months in a year was discriminatory and violated provisions of Articles 14 and 16 of the Constitution of India.

#. According to the petitioners, they have been serving for a long time in the said department. The dates of their appointment are given in para 3 of the petition and they range from 3rd February 1973 to 7th July 1981. Though their services are being terminated after eight months. The petitioners were given benefits of pay scale as well as increments and even for pension purpose, their services are counted. It is therefore contended that there was no rational criteria behind giving break of four months every year in the petitioners' service. According to the petitioners, this practice has resulted into a great hardship to the petitioners, because, for four months in a year, they are not able to maintain their families. According to the petitioners, they are ready and willing to do any work that may be assigned to them during those four months instead of terminating their service every year for that period during monsoon.

#. The case of the respondents on the other hand is that prior to 1955, all non gazetted touring officers of the Government were entitled to the services of peon during the tours. The Surveyors of the Land Records Department were accordingly entitled to services of peon when they went out for field work for eight months in a year. During monsoon, if the work was not to be done by them, by Circular dated 1-4-1955, the Government directed that the non gazetted touring officers could not get peons but instead a special cadre of Class IV servants be created to be designated as "Attendants". Such attendants were initially entitled to a fixed salary of Rs.45/- per month without any dearness allowance. In the year 1965 the Government decided to abolish the post of "Attendant" in all the Government departments and to absorb such attendants in regular post of peons. However, since the Attendants working in the Land Records Department were appointed on eight monthly basis, the said posts could not be converted into post of peons and such attendants could not be absorbed in regular posts of peons.

Therefore, the issue of such attendants of the Land Records Department was separately dealt with by the Government and the Government by its resolution dated 10-1-1969 decided to create temporary posts of "Work Charged Helpers" on consolidated pay of Rs.100/- per month for the Land Records Department. However, these were not regular posts on the establishment of the department and the salaries were to be paid out of the contingency fund. Such employees were not eligible to the benefits of pension etc. The Government therefore reviewed their case and by resolution dated 9th August, 1971 evolved a scheme, by which, the posts of work-charge helper in the Land Records Department came to be converted into regular posts of peons by resolution dated 12-12-1972. The Government on 12-4-82 further resolved not to create any new post of workcharged helper and to convert all the existing posts of workcharged helpers into regular posts of peons in the pay scale of Rs.196-232. The petitioners were working initially as "Attendants" and later their posts were converted into workcharged helper and thereafter as peons. Such eight monthly peons of Land Records Department had no work during monsoons when the surveyors did not go to field and remained confined to their offices for table work. Therefore, during July to October, Surveyors did not require any attendant and they had to be relieved during monsoon from July to October. According to the respondents, in view of the peculiar nature of duties of the Surveyors of Land Records Department, these attendants had no work for four months and such eight monthly peons constituted a class by themselves. According to the respondents, these persons could not be kept on the roll during monsoon and paid wages for doing no work. There were in all 432 such employees appointed on eight monthly basis and if all of them were to be continued during four months, they would have to be paid salary though there was no work to do. It is however stated in the affidavit in reply of the Assistant Settlement Commissioner and Director of Land Records in para 7 that "all vacant posts of full time peons in all districts are necessarily filled in by absorbing 'eight monthly' peons like petitioners" and according to the provisions made in Rule 50(a)(2) of the Bombay Civil Service Rules, 1959 ('BCSR' for short) these four months of discontinuance in service of the petitioners is not treated as break in service.

#. The phenomena of 'eight monthly' peons employed in the Land Records Department is recognized in Exception 2 to Rule 50 (a) of the BCSR which lays down that in the case of eight monthly peons employed in the Land Records

Department the period during which the establishment is not employed shall be treated as duty counting for increments in the time scale for such establishment, provided that the peon is actually on duty immediately prior to and immediately subsequent to such period i.e. firstly on the date on which the establishment is discharged and secondly on the date on which it is re-employed.

#. It is clear from the facts on record that having regard to peculiar features of the eight monthly peons working in the Land Records Department their services are required to be terminated after eight months during the monsoons, and that they had accepted their appointments on such footing. Since the work was not available during four months' monsoon period, they were relieved but they were to be continued immediately after the monsoon period and were given continuity of service under the Exception 2 of Rule 50(a) of BSCR. It is not petitioners' case that in any other department, there arose similar contingency for the employees of same level or that similar employees were continued during monsoon in the petitioners' department. It is not their case that there has been any discriminatory practice within their department. Whether to have part time employees or to have employees for a particular period during a year, would be a matter which would depend upon the administrative requirements and the nature of work which is to be performed and if on that basis, a concept of eight monthly peons was evolved, it cannot be said that those who fell in that class were discriminated against. In fact, adequate statutory provisions was made in Rule 50 of BCSR to ensure that they get the benefits of regular employees, notwithstanding, the break in service of four months in a year. The Department was aware of the difficulties of such periodic employment and therefore as stated in the affidavit in reply, it has been decided that all the vacant posts of full time peons in all districts are necessarily filled in by absorbing eight monthly peons like the petitioners. This petition was admitted on 9th September 1982 and ad interim relief which was granted earlier on 30th June 1982 in terms of para 12(D) was ordered to continue. Eighteen years have passed by and most likely, all the petitioners who had continued on the strength of the interim order must have been accommodated as per the assurance contained in the affidavit in reply, that all eight monthly peons like the petitioners will be absorbed by filling all vacant posts of full time peons in all districts from amongst them. In fact it is pointed out to us that in one such case, from order dated 11-5-99 passed in Special Civil

Application No : 3148 of 1986, the petitioner was not only absorbed but also promoted to Class III post. We have no doubt that course of absorbing eight monthly peons in all vacant post of full time peons in all districts which was promised in the affidavit in reply must have benefitted all the petitioners by now. However, the petitioners could not have claimed such absorption as a matter of right. The petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

Dt: 7-3-2000 ( R.K.Abichandani, J.) ( D.H.Waghela,J.)  
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